FILED

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OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

Gwendolyn Wright,

Petitioner

v.

Paul Frederiksen

On Petition For Writ Of Certiorari
To The Court of Appeals of the State of Colorado

PETITION FOR WRIT OF CERTIORARI

WAM Al-Haqq
Counsel of Record
Law Office of WAM Al-Haqq P.C.
710 East Twenty Fifth Avenue
Denver, Colorado 80205
(303) 832-1742

QUESTION PRESENTED

Whether the Petitioner was denied due process and equal protection under law by (1) the trial court's denial of her claim against the Respondent on the grounds of absolute immunity of an appointed master and (2) its imposition of sanctions in the form of payment of Respondent's attorney fees, prior to any legal determination by a state appellate court that the Respondent was absolutely immune from civil liability in his position as an appointed master. Had such a legal determination been made prior to her claim then her claim would be groundless and an award of attorney fees would be required under state law. But prior to such a legal determination Petitioner was without notice that her claim would be groundless.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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STATUTES AND RULES

C.R.S. 13-17-102(4), " The court **shall** assess attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado Rules of Civil Procedure or a designation by a defending party under section 13-21-111.5(3) that lacked substantial justification. As used in this article "lacked substantial justification" means substantially **frivolous**, substantially **groundless**, or substantially vexatious."

OTHER

United States Constitution, Amendment XIV, Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Colorado Constitution, Section 25: Due Process of Law. No person shall be deprived of life, liberty or property, without due process of law.

Colorado Constitution, Section 6: Equality of justice. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was December 22, 1997. A copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. Due Process under the 14th Amendment of the United States Constitution and Section 25 of the Constitution of the State of Colorado.

II. Equal Protection under the 14th Amendent of the United States Constitution and Section 6 of the Constitution of the State of Colordo..

STATEMENT OF THE CASE

The Petitioner was involved in a dissolution proceeding in 1990. The Respondent was appointed as a master in the case under a limited order of reference. He exceeded the scope of his appointment by reporting on matters which were not part of his appointment and failed to report clear violations by the husband in the divorce proceedings.

Due to the negligence of the Respondent in performing his duties as master the Petitioner suffered injury and sought remedy in the state district court. The state district court ruled that the Respondent was absolutely immune and dismissed the action requiring payment of attorney fees. No ruling had been made by the Colorado Court of Appeals or the Colorado Supreme Court prior to this ruling that a master was absolutely immune to suit. Petitioner made detailed and lengthy legal argument regarding the lack of immunity which should apply to the Respondent.

The Petitioner appealed the ruling to the Colorado Court of Appeals and the Colorado Supreme Court but the ruling was affirmed by the former and review was denied by the latter.

REASON FOR GRANTING THIS PETITION

This Petition presents the question of equal protection and due process for citizens under the state law of Colorado with respect to claims against masters who perform outside of the scope of their appointments resulting in personal injury. Recognizing that the state courts may determine that a master is absolutely immune from suit, the issue remains whether a good faith argument for a change in the existing law is available to its citizenry. Even more important is whether the citizenry should be informed that a law exists prior to having its injury dismissed and its property taken by judicial edit when a citizen challenges a master's performance. No where prior to this case has Colorado stated that a master has absolute immunity therefore a challenge to a master's performance should be within the scope of the protections guaranteed under the United States Constitution and the Colorado Constitution but however, when the Petitioner challenged this heretofore unstated status she was punished by the state of Colorado by being compelled to pay opposing attoney's fees because her claim was viewed as frivolous. A claim should not be view ed as frivolous when no ruling regarding that claim has ever been made by either the Court of Appeals or the Supreme Court of the State. Such a determination amounts to a taking under the laws of the United States of America and the state of Colorado without due process of law and a denial of equal protection of the laws of the United States of America and the state of Colorado.

CONCLUSION

This case presents a question which will have application to the implementation of laws in each state. The central issue is whether a citizen can be essentially denied equal protection of the law of the state by the state not informing the citizen of the law. This injustice can happen to any citizen unfortunate enough to live in a state where this legal application is practiced. The issued is sufficiently important to grant review.

Appendix A

Appeal from the District Court of the County of Arapahoe State of Colorado, to the Colorado Court of Appeals. Opinion issued & judgment entered May 08, 1997 before Hume, Sternberg and Kapelke, JJ.

COURT OF APPEALS, STATE OF COLORADO
2 East Fourteenth Avenue, Suite 300
Denver, Colorado 80203
(303) 837-3785

M A N D A T E

Court of Appeals No. 96CA0372
Trial Court No. 95CV526

GWEN WRIGHT V PAUL FREDERIKSEN

This cause came to be heard on the record on appeal from the District Court of the County of Arapahoe State of Colorado, and was argued by counsel. On consideration thereof, it is ordered that the Judgment and Order of the said Court is AFFIRMED.

DATE: February 17, 1998

PATRICK STANFORD,
Clerk of the Court

By: _____
Deputy Court Clerk

COURT OF APPEALS,
STATE OF COLORADO
Certified to be a full, true and correct copy.
Date: February 17, 1998
Clerk of Court of Appeals
By:Catherine Cunningham
Deputy Clerk

COPIES MAILED TO
COUNSEL OF RECORD
2-17-98

COURT OF APPEALS SEAL COLORADO

BEST AVAILA

Appendix B

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MAY 0 1 1996
Clerk, Court of Appeals

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO

CASE NO. 95 CV 526, Division 5

ORDER

GWEN WRIGHT,

Plaintiff,

v.

PAUL FREDERIKSEN,

Defendant.

THIS MATTER comes before the Court for consideration of the defendant's motion to dismiss. The Court has reviewed the briefs of the parties as well as the applicable statutes and case law. Being sufficiently apprised, the Court now makes the following order.

The defendant requests dismissal of this complaint for failure to state a claim upon which relief can be granted. Defendant argues that since he was appointed Master in the dissolution action which forms the basis for the allegations in this complaint, he is entitled to immunity for his actions taken in the capacity of Master. The Court agrees. C.R.C.P. 53 provides, inter alia, that "[s]ubject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order."

The plaintiff argues that the master is not entitled to immunity and that the complaint should not be dismissed. Plaintiff's complaint contains allegations that the defendant engaged in outrageous conduct in his capacity of master regarding plaintiff's distribution of marital property and plaintiff's custody of her juvenile son.

The Court finds that plaintiff has failed to state a claim upon which relief can be granted and that the defendant is absolutely immune from the claims alleged in plaintiff's complaint. Immunity from suit attaches to the actions of quasi-judicial officers acting within the scope of their authority. Higgs v. District Court, 713 P.2d 840, 850-50 (Colo. 1985). The Court holds that the functions performed by the master in the dissolution action were essentially judicial in nature. The defendant is entitled to absolute quasi-judicial immunity in this case. Therefore, Defendant's motion to dismiss is granted.

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Defendant requests attorney fees and sanctions alleging that the complaint is not well grounded in fact nor warranted by existing law. The Court agrees and finds that the complaint lacks substantial justification as defined by C.R.S. §13-17-102. Therefore, defendant is awarded his attorney fees and costs pursuant to C.R.S. § 13-17-102.

In light of the above rulings, the Court determines that Plaintiff's motion to compel is moot.

Dated this 27 day of December, 1995.

BY THE COURT:

James F. Macrum, Jr.
District Court Judge

Appendix C

SUPREME COURT, STATE OF COLORADO
CASE NO. 97SC583
CERTIORARI TO THE COLORADO COURT OF APPEALS, 96CA0372
DISTRICT COURT, ARAPAHOE COUNTY, 95CV526

ORDER OF COURT

GWENDOLYN WRIGHT,

Petitioner,

v.

PAUL FREDERIKSEN,

Respondent.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 22, 1997.

cc:

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Steven M. Zapiler
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Denver, CO 80206

Clerk of District Court
Arapahoe County Justice Center
7325 S. Potomac Street
Englewood, CO 80112

Supreme Court
State of Colorado
Certified to be a full, true and correct copy
DEC 22 1997
MAC V. DANFORD
Clerk of the Supreme Court
By _____ Deputy Clerk
Court Seal